LEONG KAM HOONG

v.

PENTADBIR TANAH DAERAH SEBERANG
PERAI TENGAH BUKIT MERTAJAM & ANOTHER APPEAL

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
NH CHAN JCA
SITI NORMA YAAKOB JCA
[CIVIL APPEAL NOS: P-01-151-95 & P-01-165-1995]
23 OCTOBER 2000

LAND LAW: *Acquisition of Land - Compensation - Whether adequate - Principles to take into account when deciding compensation - Whether potential and possibilities of land considered - Land Acquisition Act 1960, s. 38*

LAND LAW: *Acquisition of Land - Compensation - Whether adequate - Scheduled lands held in separate titles - Whether land to be valued individually or as a whole*

The two appeals herein arose from the same proceedings under s. 38 of the Land Acquisition Act 1960 ('the LAA') where lands were acquired and such acquisition gazetted under s. 8 of the LAA. The purpose of the acquisition was stated to be for a public purpose namely industrial and development. The appellant complained that the compensation awarded by the land administrator was inadequate. The High Court agreed with the award of the land administrator and dismissed the appellant's reference. Hence this appeal.

Among the issues for consideration were: (a) whether the trial judge erred when he failed to consider the principle that even though the scheduled lands were estate lands, they must be valued for their industrial potential; and (b) whether the trial judge erred when he agreed with the land administrator when the latter valued the scheduled lands separately and individually.

Held:
Per Siti Norma Yaakob JCA

[1] Market value must be based on a rational enquiry of the value of the property to the owner which is an objective assessment of all the surrounding circumstances. Ordinarily, the objective assessment would be the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale of the land. The property must be valued not only with reference to its condition at the time of acquisition but also its potential development value.

[1a] Although the LAA makes no provision relating to the method of valuation, the main principles that have to be applied according to the facts and circumstances of a particular case are along the lines provided by the First Schedule of the LAA and as decided from time to time by the courts. One of the principles to be taken into account is the potentialities or possibilities of the land.

[2] The scheduled lands were held in three separate titles but they had to be valued as a whole under the LAA. As such there had been a clear error of law when the judge accepted the land administrator's award after the latter valued the scheduled lands individually and separately.

[3] The comparables of sales of the neighbouring lands, the strategic location of the scheduled lands, and the failure to value the scheduled lands for their industrial potential coupled with the failure to value them as one unit were reasons good enough for the court to interfere with the quantum of compensation.

[Appeal allowed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Kedua-dua rayuan berbangkit daripada prosiding yang sama di bawah s. 38 Akta Pengambilan Tanah 1960 ('APT tersebut') di mana tanah-tanah telah diperolehi dan pengambilan diwartakan di bawah s. 8 APT tersebut. Tujuan pengambilan tersebut telah dinyatakan bagi pembangunan dan industri. Perayu mengadu bahawa jumlah pampasan yang diawardkan kepada mereka oleh pentadbir tanah adalah tidak memadai. Mahkamah Tinggi walaubagaimanapun bersetuju dengan jumlah yang diawardkan oleh pentadbir tanah dan menolak rujukan perayu. Ini mengakibatkan rayuan semasa.

Antara isu-isu untuk pertimbangan adalah: (a) samada hakim perbicaraan tersalah pertimbangan bilamana beliau gagal untuk mempertimbangkan prinsip bahawa meskipun tanah-tanah terjadual tersebut adalah merupakan tanah-tanah estet, ianaya mestilah dinilaikan bagi potensi perindustrian; dan (b) samada hakim perbicaraan tersalah pertimbangan bilamana beliau bersetuju dengan pentadbir tanah yang telah menilaikan tanah-tanah terjadual tersebut secara individu dan berasingan.

Diputuskan:
Oleh Siti Norma Yaakob HMR

[1] Nilai pasaran mestilah diasaskan pada siasatan tanah tersebut yang rasional yang mana merupakan penilaian objektif kesemua keadaan-keadaan yang mengelilinginya. Biasanya penilaian objektif akan merupakan harga yang seseorang tuanpunya bersedia tetapi tidak

berkewajipan untuk menjual akan perolehi daripada pembeli yang bersedia dengan siapa beliau telah membuat tawaran untuk penjualan tanah tersebut. Hartanah tersebut mestilah dinilai bukan sahaja dengan merujuk kepada keadaannya pada waktu pengambilan tetapi juga potensi nilai pembangunannya.

[1a] Oleh kerana APT tidak membuat sebarang peruntukan berhubung dengan cara penilaian, prinsip utama yang kena dipakai menurut fakta-fakta dan keadaan sesuatu kes yang tertentu mestilah menurut garispanduan yang diperuntukan oleh Jadual Pertama APT tersebut dan sepertimana yang diputuskan dari semasa ke semasa oleh mahkamah. Salah satu prinsip yang harus diambilkira adalah potensi dan kemungkinan tanah terssebut.

[2] Tanah-tanah yang dijadualkan itu telah dipegang dalam tiga hakmilik berasingan tetapi haruslah dinilai secara keseluruhan di bawah APT tersebut. Oleh itu terdapat kesilapan undang-undang yang nyata bilamana hakim menerima award-award pentadbir tanah setelah beliau menilaikan tanah-tanah tersebut secara individu dan berasingan.

[3] Dengan mengambilkira jualan tanah-tanah bersebelahan yang boleh dibandingkan, lokasi tanah-tanah terjadual, dan kegagalan untuk menilai tanah-tanah terjadual itu bagi potensi perindustriannya berserta dengan kegagalan untuk menilaikannya sebagai satu unit terdapatlah alasan-alasan yang cukup baik untuk mahkamah menganggu pampasan kuantum.

[Rayuan dibenarkan.]

Case(s) referred to:

Bukit Rajah Rubber Co Ltd v. Collector of Land Revenue, Klang [1968] 1 MLJ 176 ***(foll)***

Chuah Say Hai & Ors v. Collector of Land Revenue, Kuala Lumpur [1967] 2 MLJ 99 ***(foll)***

Collector of Land Revenue v. Alagappa Chettiar [1971] 1 MLJ 43 ***(foll)***

Kumpulan Sua Betong Sdn Bhd v. Ezan Sdn Bhd & Anor [1993] 3 CLJ 337 ***(refd)***

Ng Tiou Hong v. Collector of Land Revenue, Gombak [1984] 2 MLJ 35 ***(foll)***

Legislation referred to:

Electricity Act 1949, s. 55(3), (4)
Land Acquisition Act 1960, ss. 3(1)(a), 8, 38, 1st sch para 3(e)
National Land Code 1965, s. 214A

Civil Appeal No: P-01-151-95
For the appellant - Ghazi Ishak; M/s Ghazi & Lim
For the respondent - Alizatul Khair Osman Khairuddin SLA (Mohd Ruzima Ghazali with her)

Civil Appeal No: P-01-165-95

For the appellants - Wong Chong Wah (Loo Peh Fern with him); M/s Peter Huang & Richard

For the respondents - Alizatul Khair Osman Khairuddin SLA (Mohd Ruzima Ghazali with her)

[Appeal from High Court, Pulau Pinang; Land Reference No: 15-18-1992]

Reported by Mariette Peters-Goh

JUDGMENT

Siti Norma Yaakob JCA:

These two appeals were heard together as they arose from the same proceedings under s. 38 of the Land Acquisition Act 1960 ("the Act"), where the appellants' complaints that the amount of compensation awarded to them by the land administrator, Seberang Perai Tengah, Bukit Mertajam was inadequate, were rejected by the High Court. In appealing against the High Court decision, the appellants filed separate notices of appeal and upon registration, two files were opened and two civil appeal numbers alloted to them.

The acquisition of the scheduled lands was gazetted under s. 8 of the Act on 6 June 1991, and the purpose of the acquisition is stated to be for a public purpose namely industrial and development. The scheduled lands are made up of three lots described as Lots 720, 787 and 794, all in Mukim 13, Bukit Mertajam. The total area acquired from the three lots amounted to 712.045 acres, which is made up as follows:

(1) 84.4054 acres came from Lot 720, for which a compensation of RM44,000 per acre or RM1 per sq. foot was awarded as compensation.

(2) 321.3750 acres came from Lot 787, for which $28,000 per acre or RM0.65 sen per sq. foot was awarded as compensation and

(3) 315.8750 acres came from Lot 794 for which RM30,000 per acre or RM0.68 sen per sq. foot was awarded as compensation.

The High Court agreed with the amounts awarded by the land administrator, dismissed the appellants' reference, forfeited the deposits made by them but made no order as to costs.

Before us, the appellants attacked the judge's findings based on the following grounds.

1. That the judge erred when he failed to consider the principle that even though the scheduled lands are estate lands, they must be valued for their industrial potential.

2. That both the land administrator and the learned judge erred when they valued the scheduled lands separately and individually and not as a whole.

In response to the first objection, the state legal adviser, Penang, who represented the respondent in both appeals, relied on the provisions of para. 3(e) of the First Schedule to the Act which deal with matters to be neglected in determining compensation. The particular paragraph contains the following provisions.

> In determining the amount of compensation to be awarded for any scheduled land acquired under this Act the following matters shall not be taken into consideration:
>
> (a) ...
>
> (b) ...
>
> (c) ...
>
> (d) ...
>
> (e) any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired.

It is the respondent's contention that the failure to value the industrial potential of the scheduled lands was very much in keeping with the provisions of para. 3(e), and as such was in order.

We could not agree with such a contention as there is no evidence as to the specific use or specific development that the state authority intends for the scheduled lands. All that we have on record is the gazette notification that declares the purpose for which the scheduled lands were acquired to be for a public purpose namely industrial and development, a purpose that is authorised by s. 3(1)(a) of the Act. For the determination of compensation, we consider that the general purpose of such acquisition to be quite a different matter as to the specific use or specific development the scheduled lands are put to upon acquisition. The state authority may well have some grandiose plans as to how the scheduled lands are to be developed with a view to enhancing their value and it is this anticipated enhanced value that para. 3(e) of the First Schedule seeks to discount when determining the market value of the scheduled lands. That paragraph we say does not do away with the principle that for the purpose of compensating the parties whose lands have been acquired, the potential

industrial value of the lands acquired can be taken into consideration when determining the quantum of compensation to be awarded. Potentialities and realities are quite separate and therein lies the difference and as authority we cite *Bukit Rajah Rubber Co. Ltd v. Collector of Land Revenue, Klang,* [1968] 1 MLJ 176 where Raja Azlan Shah, J (as he then was) expressed what market value should be in the following manner.

> In my view, the market value must be based on a rational enquiry of the value of the property to the owner which is an objective assessment of all the surrounding circumstances. Ordinarily, the objective assessment would be the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale of the land. The property must be valued not only with reference to its condition at the time of acquisition but also its potential development value.

Twenty one years later in *Ng Tiou Hong v. Collector of Land Revenue, Gombak* [1984] 2 MLJ 35, the Federal Court, whilst appreciating that the Act makes no provision relating to the method of valuation, outlined the main principles "that have to be applied according to the facts and circumstances of a particular case along the lines provided by the First Schedule to the Act and as decided from time to time by the courts". We say that one of such principles is that potentialities or possibilities must be taken into account. As was said by Gill, J (as he then was) in *Chuah Say Hai & Ors. v. Collector of Land Revenue, Kuala Lumpur* [1967] 2 MLJ 99, it "is the possibilities of the land and not its realised possibilities that must be taken into account."

It is not disputed that the scheduled lands are held in three separate titles with two joint owners with Lots 720 and 794 graded as first grade lands whilst Lot 787 is not graded. In *Collector of Land Revenue v. Alagappa Chettiar* [1971] 1 MLJ 43, the Privy Council held that scheduled lands are to be valued as a whole under the Act. That decision was adopted by the Federal Court in *Ng Tiou Hong*'s case *(supra)* and it also reaffirmed the method of valuation adopted in *Chuah Say Hai*'s case *(supra)* where the court valued 23 acres as a single unit even though the totality of the land acquired was held in seven separate titles registered in the names of nine co-owners. As such there has been a clear error of law when the learned judge accepted the land administrator's awards when the latter valued the scheduled lands individually and separately.

From the site plans, the scheduled lands are strategically located in the centre of the housing and industrial hub of Province Wellesley. It is bounded by five housing estates namely Taman Sukun, Taman Markissa and Taman Sentul in the south east and Taman Sentul and Taman Mangga in the west and Taman Seri Mangga in the north west. There are also two industrial estates namely Perda Industrial Estate and Bukit Tengah Industrial Estate in the immediate

neighbourhood of the scheduled lands. As such the industrial potential of the scheduled lands is apparent and real. Additionally Lot 720 has a good road frontage as it is on Jalan Bukit Tengah and Simpang Empat, a major trunk road. Lot 794 however has no access road but there is an irrigation canal to Lot 720 and all three lots are linked together as one. It is one estate with two joint owners, they being the applicants themselves.

The government valuer had made comparables of sale transactions in the surrounding areas and in addition had:

(1) reduced the value of the scheduled lands by 20% because the acquisition of such lands was made contrary to s. 214A of the National Land Code and

(2) reduced the value of Lot 787 by 30% because a portion of the land lies under two chain rentis.

Section 214A *inter alia*, provides for the requirement of an approval of the estate land board where estate land is transferred or conveyed to two or more persons. That situation does not arise on the facts of the appeals before us as the transfer is made to one person, namely the state authority. As such we say that s. 214A is not applicable as was held in *Kumpulan Sua Betong Sdn. Bhd. v. Ezan Sdn. Bhd. & Anor*. [1993] 3 CLJ 337 which was decided on somewhat similar facts.

It is also the appellants' contention that they should not be penalised by the presence of the chain rentis over Lot 787, as they were placed there by Tenaga Electric Nasional without acquiring that portion of the land under rentis and as such the land shoud be valued without regard to the overhead rentis.

We agree with the appellants' contention as we consider it to be unjust and unconscionable that they are deprived of the full value of their lands by the presence of the rentis that were erected by a third party. In any event if Tenaga Electric Nasional had wanted the land permanently, it could, under s. 55(3) and (4) of the Electricity Act 1949, have requested the state authority to acquire that portion of the land and compensation would have to be paid to the landowners under the Act without due regard to the overhead rentis. Likewise the appellants should be accorded the same consideration and treatment and Lot 787 valued without regard to the overhead rentis.

In the course of the arguments before us, we were also drawn to the fact that on 7 April 1995, another land collector's award in respect of a neighbouring lot, Lot 1099 was increased by the High Court from RM1.48 per square foot for RM5 per square foot. The material date of valuation was 11 May 1989,

two years and one month before the date of valuation of the scheduled lands before us. It was also explained that the enhanced value was due to the fact that Lot 1099 was purchased at RM5.90 per square foot before acquisition.

Quite apart from the comparables of sales of neighbouring lands, we were fully satisfied that the failure to value the scheduled lands for their industrial potential coupled with the failure to value them as one unit are reasons good enough for us to interfere with the quantum of compensation. Considering the location of the scheduled lands, and their high potential value, we had subtituted the awards given by the land administrator and the High Court by increasing the value of the three lots acquired as a whole at RM1.50 per square foot. To that end we had allowed both appeals with costs here and below and ordered that the deposits be refunded to the appellants.